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STATE CAPITOL
PHOENIX, ARIZONA

August 31, 1978

DEPARTMENT OF LAW OPINION NO. 73-21 (R)

REQUESTED BY: THE HONORABLE MOISE BERGER
Maricopa County Attorney

QUESTIONS:

1. May the employee of a school district be permitted to use on request a designated portion of his earned and available sick leave for any or all of the following purposes:
 - a. Illness in the immediate family;
 - b. Illness of close relatives other than the immediate family;
 - c. Travel time for either of these purposes;
 - d. Bereavement leave for the immediate family or close relatives other than the immediate family;
 - e. Travel time in connection with bereavement leave;
 - f. Religious leave with prior permission of supervisor;
 - g. Personal business leave with prior permission of supervisor.
2. If the answer to any one or all of the above questions is no, can any or all of the above leaves exist independent of sick leave? In other words, can these requested leaves of absence for these purposes be granted with pay, outside of the "umbrella" of sick leave?
3. May the school board grant temporary leave of absence with pay, with the prior approval of the Superintendent, to a teacher to attend conferences, conventions, or

workshops sponsored by a professional education association, as an official delegate of the association? If such leave with pay is permitted, are there any legal restrictions as to who is eligible to attend?

4. May a school district adopt policy providing for payment to employees for unused sick leave?

ANSWERS: See body of opinion.

I

Regarding Questions 1 through 3, where no statutory prohibition exists or is implied, we have consistently stated that we consider leave time to be a matter of fringe benefits and salary, and the governing board of the school district has wide discretion in offering this type of plan to its employees.

The types of leave envisioned by the first three questions all appear to fall within this area of allowable fringe benefits. We see nothing to prevent a governing board of a school district from contracting with its employees for these types of leave. The cumulative nature of the benefits offered does not in and of itself necessitate a different conclusion. However, the scope of accumulated benefits may well create a problem for the governing board.

It has long been the law in this state that no school funds may be expended for any purpose other than to further the educational needs of the district. Prescott Community Hospital Commission v. Prescott High School District, 57 Ariz. 492, 115 P.2d 160 (1941). Article IX, § 7 of the Arizona Constitution prohibits the gift of any public funds. It is therefore possible for a district to offer so many types of accumulated leave that, at some point, a gift of district money accrues to the employee. The point at which accumulated leave constitutes a gift rather than a legitimate fringe benefit cannot be determined by us. This determination of the nature and extent of leave benefits which are offered to employees is an administrative matter, and must be made by the governing board of the district, subject to review by the courts.

We see no reason to insist that the enumerated types of leave be classed as sick leave. In our opinion, school boards may offer these benefits as part of the contracts with the employees. If the benefits offered were unlawful, it would not matter what the governing board chose to call them.

We offer several caveats with our approval of the types of leave enumerated in the first three questions. The school board must be careful that leave is not used in such a manner as to contravene Attorney General Opinion No. 71-4 concerning constitutional double pay prohibitions. The board may not offer leave benefits amounting to a gift of school monies. If the board offers leave to attend educational association conferences, etc., the board must retain the right to refuse permission to attend any particular association activity, and the activity must in some way promote legitimate educational objectives. The board may not allow an outside agency or association the unlimited right to determine an employee's attendance pattern. Within these parameters the governing boards of school districts may contract with their employees for leave time as the boards see fit.

II

The question of payment for accumulated sick leave presents a number of different issues. First, payment for accumulated sick leave must be distinguished from extra-termination benefits which were found to be unlawful in Attorney General Opinion No. 71-16. The termination benefits discussed in that opinion were to be granted routinely to each employee regardless of past performance and, therefore, amounted to a supplemental retirement fund. A plan for payment of unused sick leave is essentially deferred compensation which is earned by the employee's forgoing contractual benefits during the term of his employment. This type of benefit is most analogous to payment for accumulated vacation time.

The specific plan which was presented for review works essentially as follows:

The employee is allowed to accumulate a certain number of days of unused sick leave. After the employee has worked within the district for a predetermined number of years, the right to sell back to the district a certain

amount of sick leave accrues to the employee. After the initial predetermined period has passed, the district pays a sum (in this case a portion of the employee's hourly wage) to the employee upon termination or retirement.

The data provided by the district in support of this policy states a number of facts. The most convincing fact is that absence due to illness drops by as much as 75% when employees are paid for unused sick leave. The district presented figures showing that, by paying less for unused sick leave than is paid for substitute teachers, the district can save a substantial amount of money. In addition to the monetary savings contemplated by the district, it was pointed out that the district also saves the administrative cost of finding substitute teachers, and that classes are not interrupted by a constant change of teachers.

These facts evidently have been found to be true nationwide, as can be seen from the cases cited below. City of Orange v. Chance, 325 S.W.2d 838 (1959), held that full payment for accumulated sick leave at termination of employment was not a gratuity and did not constitute extra compensation, which was prohibited by constitutional provision. This case recognized that payment for sick leave cut down considerably on absenteeism within the school districts.

The result and reasoning of this case can also be seen in Providence Teachers Union Local 958 v. School Committee, 276 A.2d 762 (1971), and Purdie v. Jarrett, 152 S.E.2d 749 (1966). These cases noted the fact that when an employee was compensated a mild case of the sniffles was less likely to be treated as a case of double pneumonia. Each court presented with this issue found that the forbearance of the employee from staying home with a bad case of psychosomatic seasonal helplessness was of sufficient benefit to a school district to allow payment.

It is a sad fact that monetary compensation seems to be a specific for a number of otherwise untreatable diseases. We do not condone such behavior, but we must agree with the courts that we are dealing with reality and not debating morality. The fact is that a school district does receive several valuable benefits by enacting such policy. These benefits are sufficient to justify what, at an earlier time, might have been condemned.

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It is therefore our opinion that, under the appropriate circumstances, where the governing board of a school district determines that it is to its benefit to do so, the board may offer employees compensation for unused sick leave.

We caution any school district which makes this decision that its budget procedures will require some changes. We suggest that, in order to avoid problems due to unexpected resignations or retirements, the governing boards require stringent notice prior to termination, and that any policy enacted in this area be carefully checked with the County Attorney.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gary K. Nelson".

GARY K. NELSON
The Attorney General

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